

THE HON. JOHN C. COUGHENOUR

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RANDAL ROUTH, on behalf of RICHARD
M. NICHOLSON, an individual,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendants.

NO. 2:24-cv-00563-JCC

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 **2. “CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: (1) Richard M. Nicholson’s (“Mr. Nicholson’s”) unredacted
4 financial account statements and copies of checks; (2) Defendant’s unredacted financial and
5 administrative records containing Mr. Nicholson’s personal identifying information; and/or (3)
6 Defendant’s proprietary internal documents relevant to this matter.

7 **3. SCOPE**

8 The protections conferred by this agreement cover not only confidential material (as
9 defined above), but also (1) any information copied or extracted from confidential material; (2)
10 all copies, excerpts, summaries, or compilations of confidential material; and (3) any
11 testimony, conversations, or presentations by parties or their counsel that might reveal
12 confidential material.

13
14 However, the protections conferred by this agreement do not cover information that is
15 in the public domain or becomes part of the public domain through trial or otherwise.

16 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

17 4.1 Basic Principles. A receiving party may use confidential material that is
18 disclosed or produced by another party or by a non-party in connection with this case only for
19 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
20 disclosed only to the categories of persons and under the conditions described in this
21 agreement. Confidential material must be stored and maintained by a receiving party at a
22 location and in a secure manner that ensures that access is limited to the persons authorized
23 under this agreement.

24
25 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise

1 ordered by the court or permitted in writing by the designating party, a receiving party may
2 disclose any confidential material only to:

3 (a) the receiving party's counsel of record in this action, as well as
4 employees of counsel to whom it is reasonably necessary to disclose the information for
5 this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the
8 parties agree that a particular document or material produced is for Attorney's Eyes
9 Only and is so designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for
11 this litigation and who have signed the "Acknowledgment and Agreement to Be
12 Bound" (Exhibit A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the duplication
15 of confidential material, provided that counsel for the party retaining the copy or
16 imaging service instructs the service not to disclose any confidential material to third
17 parties and to immediately return all originals and copies of any confidential material;
18

19 (f) during their depositions, witnesses in the action who have signed the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed
21 by the designating party or ordered by the court. Pages of transcribed deposition
22 testimony or exhibits to depositions that reveal confidential material must be separately
23 bound by the court reporter and may not be disclosed to anyone except as permitted
24 under this agreement;
25

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not

1 warranted are not swept unjustifiably within the ambit of this agreement.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
4 unnecessarily encumber or delay the case development process or to impose unnecessary
5 expenses and burdens on other parties) expose the designating party to sanctions.

6 If it comes to a designating party's attention that information or items that it designated
7 for protection do not qualify for protection, the designating party must promptly notify all other
8 parties that it is withdrawing the mistaken designation.

9
10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement
13 must be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic documents
15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each
17 page that contains confidential material. If only a portion or portions of the material on
18 a page qualifies for protection, the producing party also must clearly identify the
19 protected portion(s) (e.g., by making appropriate markings in the margins).

20
21 (b) Testimony given in deposition or in other pretrial proceedings: the
22 parties and any participating non-parties must identify on the record, during the
23 deposition or other pretrial proceeding, all protected testimony, without prejudice to
24 their right to so designate other testimony after reviewing the transcript. Any party or
25 non-party may, within fifteen days after receiving the transcript of the deposition or

1 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
 2 confidential. If a party or non-party desires to protect confidential information at trial,
 3 the issue should be addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent
 5 place on the exterior of the container or containers in which the information or item is
 6 stored the word "CONFIDENTIAL." If only a portion or portions of the information or
 7 item warrant protection, the producing party, to the extent practicable, shall identify the
 8 protected portion(s).

9
 10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 11 designate qualified information or items does not, standing alone, waive the designating party's
 12 right to secure protection under this agreement for such material. Upon timely correction of a
 13 designation, the receiving party must make reasonable efforts to ensure that the material is
 14 treated in accordance with the provisions of this agreement.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 17 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 21 original designation is disclosed.

22
 23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 24 regarding confidential designations without court involvement. Any motion regarding
 25 confidential designations or for a protective order must include a certification, in the motion or

in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued

1 by the designating party whose confidential material may be affected.

2 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

3 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
4 confidential material to any person or in any circumstance not authorized under this agreement,
5 the receiving party must immediately (a) notify in writing the designating party of the
6 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
7 protected material, (c) inform the person or persons to whom unauthorized disclosures were
8 made of all the terms of this agreement, and (d) request that such person or persons execute the
9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.
10

11 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a producing party gives notice to receiving parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery
17 order or agreement that provides for production without prior privilege review. The parties
18 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

19 **10. RETENTION AND NON-TERMINATION.**

20 Within sixty (60) days of the entry of the final order or judgment, including any appeal
21 taken therefrom, which concludes this litigation, all Confidential Material, including, but not
22 limited to, all copies, summaries, and abstracts thereof, shall be (1) assembled and returned to the
23 designating party, or (2) destroyed, at the option of the party in possession thereof. If a party
24 chooses to destroy material designated as Confidential, the party will provide a letter of
25 certification acknowledging that the party has destroyed all such material. To the extent any

Confidential material is filed with the Court, the Court, at its discretion, may return those documents to the Party who submitted them to the Court, to be dealt with in compliance with this paragraph, or destroy any sealed material. The provisions of this Order insofar as they restrict the communication and use of Confidential material shall, without written permission of any party or further order of this Court, continue to be binding on all parties and individuals receiving Confidential material after the conclusion of this litigation. Notwithstanding the foregoing, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, and any discovery materials upon which those filings or work product rely, or incorporate by reference.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated:

09/10/24

BADGLEY MULLINS TURNER PLLC

/s/Mark A. Trivett

Mark A. Trivett, WSBA #46375

19929 Ballinger Way NE, #200

Seattle, WA 98155

Tel: (206) 621-6566

Email: mtrivett@badgelymullins.com

Attorneys for Plaintiff

MILLER NASH LLP

Dated:

09/10/24

/s/Daniel J. Oates

Daniel J. Oates, WSBA No. 39334

Jesús Miguel Palomares, WSBA No. 51858

605 5th Ave. S., Suite 900

Seattle, WA 98104

Tel: (206) 624-8300

Email: dan.oates@millernash.com ;

Jesus.palomares@millernash.com

Attorneys for Defendant Bank of America, N.A.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 federal or state proceeding, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.
7

8 DATED: September 12, 2024

9
10 

11 _____
12 HON. JOHN C. COUGHENOUR
13 United States District Court Judge
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Western District of Washington on [date]
in the case of _____ [**insert formal name of the case and the number and
initials assigned to it by the court**]. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____